

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 1824 of 1997
To
FIRST APPEAL No. 1842 of 1997**

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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**NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
INUSBHAI ADAMBHAI & 2 - Defendant(s)**

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1 - 2.
None for Defendant(s) : 3, 3.2.2, 3.2.4, 3.2.5, 3.2.6, 3.2.7
MR SHAKEEL A QURESHI for Defendant(s) : 3.2.1, 3.2.3, 3.2.8

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/02/2012

ORAL JUDGMENT

1. By way of these appeals under Section 173 of the Motor Vehicles Act, 1939, the appellants have challenged the common judgement and award dated 07.12.1996 passed by the Motor Accident Claims Tribunal (Main), Bhavnagar in M.A.C.P Nos. 228, 229, 230, 290, 310, 288, 289, 294, 296, 298, 300, 301, 302, 303, 306, 407 of 1994 & 36 of 1995 whereby the Tribunal directed the original opponents to jointly pay compensation with interest and proportionate costs.

2. 28 Claim petitions arose out of the same accident which occurred on 16.03.1994 near village Sanosara. The deceased and injured persons were travelling in a tempo bearing registration no. GJ-4T-6319 being driven by the original opponent no. 1 in a rash and negligent manner as a result of which the tempo turned turtle. The original applicants had filed claim petitions seeking compensation. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr Sunil Parikh, learned advocate appearing for Mr. Rajni Mehta for the appellant has contended that the present appellant ought to have been held not liable to pay the compensation amount as there is a specific condition in the policy not to use the vehicle for hire or reward. He has further contended that the Tribunal failed to appreciate that the passengers carried in a goods vehicle can by no stretch of imagination be construed as third party. He submitted that 28 persons cannot be termed as owners of the goods travelling in the vehicle.

3.1 Mr Parikh has placed reliance on the decision of the

Apex Court in order to substantiate his contentions. He has relied upon the decision in the case of **New India Assurance Co. Ltd v Asharani reported in 2003(2) SCC 223.**

4. Heard learned counsel for the parties. I have gone through the averments made in the appeal and documents placed on record including the award of the Tribunal. From the perusal of the award, it is clear that the present appellant had strongly contended before the Tribunal that it is absolved from the liability of paying compensation in view of the fact that the insured had committed breach of the terms of the policy as also the provisions of the M.V. Act by carrying passengers on payment of hire or reward in the goods vehicle.

4.1 A perusal of the decision relied on by the learned counsel for the appellant is relevant at this stage. In the case of New India Assurance Co. Ltd (supra), keeping in view the provisions of the 1988 Act, the Apex Court has taken the view that as the provisions do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore.

5. As a result of hearing and perusal of records and in view of the decision of the Apex Court, I am of the opinion that the contentions raised by the appellant is required to be accepted. The fact that the vehicle in question was a goods vehicle cannot be disputed and therefore the appellant cannot be held liable to undertake third party risk in a case where the vehicle is used for a purpose other than the one for which the policy is covered.

5.1 The claimants themselves had admitted that they had hired the tempo for going to various places for their religious rites and hence there was a breach of the terms and conditions of the policy as well as provisions of the Motor Vehicles Act which entitles the insurance company to be absolved from the liability. In that view of the matter, the award of the Tribunal is required to be modified by not holding the present appellant liable for the compensation payable to the original claimants.

6. In the premises aforesaid, the appeals are allowed. The award of the Tribunal is quashed and set aside qua liability of the insurance company-present appellant. The amount deposited by the insurance company shall be refunded. However, if the amount is withdrawn by the original claimants, the same shall not be recovered. It will be open for the insurance company to recover the same from the owner and if the amount is not paid to the claimant it will be open for the claimants to recover the same from the owner. The award of the Tribunal impugned in these appeals is modified accordingly. No order as to costs.

(K.S. JHAVERI, J.)

Divya//